

Senate Bill No. 303

Passed the Senate June 30, 2003

Secretary of the Senate

Passed the Assembly June 26, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 17075.15 of the Education Code, and to amend Sections 53321 and 53345.8 of, and to add Section 53313.51 to, the Government Code, relating to local agency facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 303, Torlakson. Local agency facilities.

(1) Existing law requires the State Allocation Board to adopt regulations for determining the amount of funding and the eligibility and prioritization of funding that school districts with a financial hardship may receive from bond acts for construction, modernization, or relocation assistance. The regulations require consideration of various factors, including whether the school district has current outstanding bonded indebtedness, on which it is paying debt service, of at least 60% of its total bonding capacity.

This bill would revise that factor to specify the purpose of that outstanding indebtedness.

(2) Existing law provides for the establishment of community facilities districts as a means of financing the construction, purchase, or improvement of certain public facilities, including school facilities, and certain public services. Existing law requires the adoption of a resolution of intention to establish the district that specifies, among other things, conditions on the imposition of a special tax to pay for public facilities, including specifying the last tax year in which the special tax may be levied or collected.

This bill would authorize the legislative body of the district to enter into an agreement for the construction of discrete portions or phases of facilities to be constructed and purchased, subject to specified conditions. This bill would provide that a special tax that was lawfully levied in or before the final tax year and remains delinquent may be collected in subsequent years.

(3) Existing law requires that the legislative body of a community facilities district, in order to sell bonds, determine that the value of the real property that would be subject to the special tax to pay debt service on the bonds will be at least 3 times the principal amount of the bonds to be sold and other outstanding



bonds secured by a special tax or assessment, with specified exceptions.

This bill would specify the method for estimating the principal amount of the other outstanding bonds and would provide an additional exception to requiring that determination.

The people of the State of California do enact as follows:

SECTION 1. Section 17075.15 of the Education Code is amended to read:

17075.15. (a) From funds available from any bond act for the purpose of funding facilities for school districts with a financial hardship, the board may provide other construction, modernization, or relocation assistance as set forth in this chapter or Chapter 14 (commencing with Section 17085) to the extent that severe circumstances may require, and may adjust or defer the local financial participation, as pupil health and safety considerations require to the extent that bond act funds are provided for this purpose.

(b) The board shall adopt regulations for determining the amount of funding that may be provided to a district, and the eligibility and prioritization of funding, under this article.

(c) The regulations shall define the amount, and sources, of financing that the school district could reasonably provide for school facilities as follows:

(1) Unencumbered funds available in all facility accounts in the school district including, but not limited to, fees on development, redevelopment funds, sale proceeds from surplus property, funds generated by certificates of participation for facility purposes, bond funds, federal grants, and other funds available for school facilities, as the board may determine.

(2) The board may exclude from consideration all funds encumbered for a specific capital outlay purpose, a reasonable amount for interim housing, and other funds that the board may find are not reasonably available for the project.

(d) Further, the regulations shall also specify a method for determining required levels of local effort to obtain matching funds. The regulations shall include consideration of at least all of the following factors:

(1) Whether the school district has passed a bond measure within the two-year period immediately preceding the application for funding under this article, the proceeds of which are substantially available for use in the project to be funded under this chapter, but remains unable to provide the necessary matching share requirement.

(2) Whether the principal amount of the current outstanding bonded indebtedness issued for the purpose of constructing school facilities for the school district and secured by property within the school district or by revenues of, or available to, the school district, which shall include general obligation bonds, Mello-Roos bonds, school facility improvement district bonds, certificates of participation, and other debt instruments issued for the purpose of constructing school facilities for the school district and for which owners of property within the school district or the school district are paying debt service is at least 60 percent of the school district's total bonding capacity, as determined by the board.

(3) Whether the total bonding capacity, as defined in Section 15102 or 15106, as applicable, is five million dollars (\$5,000,000) or less, in which case, the school district shall be deemed eligible for financial hardship.

(4) Whether the application for funding under this article is from a county superintendent of schools.

(5) Whether the school district submits other evidence of substantial local effort acceptable to the board.

(6) The value of any unused local general obligation debt capacity, and developer fees added to the needs analysis to reflect the district's financial hardship, available for the purposes of school facilities financing.

SEC. 2. Section 53313.51 is added to the Government Code, to read:

53313.51. The legislative body may enter into an agreement for the construction of discrete portions or phases of facilities to be constructed and purchased consistent with Section 53313.5. The agreement may include any provisions that the legislative body determines are necessary or convenient, but shall do all of the following:

(a) Identify the specific facilities or discrete portions or phases of facilities to be constructed and purchased. The legislative body may agree to purchase discrete portions or phases of facilities if the



portions or phases are capable of serviceable use as determined by the legislative body.

(b) Notwithstanding subdivision (a), when the purchase value of a facility exceeds one million dollars (\$1,000,000), the legislative body may agree to purchase discrete portions or phases of the partially completed project.

(c) Identify procedures to ensure that the facilities are constructed pursuant to plans, standards, specifications, and other requirements as determined by the legislative body.

(d) Specify a price or a method to determine a price for each facility or discrete portion or phase of a facility. The price may include an amount reflecting the interim cost of financing cash payments that must be made during construction of the project, at the discretion of the legislative body.

(e) Specify procedures for final inspection and approval of facilities or discrete portions of facilities, for approval of payment, and for acceptance and conveyance or dedication of the facilities to the local agency.

SEC. 3. Section 53321 of the Government Code is amended to read:

53321. Proceedings for the establishment of a community facilities district shall be instituted by the adoption of a resolution of intention to establish the district which shall do all of the following:

(a) State that a community facilities district is proposed to be established under the terms of this chapter and describe the boundaries of the territory proposed for inclusion in the district, which may be accomplished by reference to a map on file in the office of the clerk, showing the proposed community facilities district. The boundaries of the territory proposed for inclusion in the district shall include the entirety of any parcel subject to taxation by the proposed district.

(b) State the name proposed for the district in substantially the following form: "Community Facilities District No. ____."

(c) Describe the public facilities and services proposed to be financed by the district pursuant to this chapter. The description may be general and may include alternatives and options, but it shall be sufficiently informative to allow a taxpayer within the district to understand what the funds of the district may be used to finance. If the purchase of completed public facilities or the



incurring of incidental expenses is proposed, the resolution shall identify those facilities or expenses. If facilities are proposed to be financed through any financing plan, including, but not limited to, any lease, lease-purchase, or installment-purchase arrangement, the resolution shall briefly describe the proposed arrangement.

(d) State that, except where funds are otherwise available, a special tax sufficient to pay for all facilities and services, secured by recordation of a continuing lien against all nonexempt real property in the district, will be annually levied within the area. The resolution shall specify the rate, method of apportionment, and manner of collection of the special tax in sufficient detail to allow each landowner or resident within the proposed district to estimate the maximum amount that he or she will have to pay. The legislative body may specify conditions under which the obligation to pay the specified special tax may be prepaid and permanently satisfied. The legislative body may specify conditions under which the rate of the special tax may be permanently reduced in compliance with the provisions of Section 53313.9.

In the case of any special tax to pay for public facilities and to be levied against any parcel used for private residential purposes, (1) the maximum special tax shall be specified as a dollar amount which shall be calculated and thereby established not later than the date on which the parcel is first subject to the tax because of its use for private residential purposes, which amount shall not be increased over time except that it may be increased by an amount not to exceed 2 percent per year, (2) the resolution shall specify a tax year after which no further special tax subject to this sentence shall be levied or collected, except that a special tax that was lawfully levied in or before the final tax year and that remains delinquent may be collected in subsequent years, and (3) the resolution shall specify that under no circumstances will the special tax levied against any parcel subject to this sentence be increased as a consequence of delinquency or default by the owner of any other parcel or parcels within the district by more than 10 percent. For purposes of this paragraph, a parcel shall be considered “used for private residential purposes” not later than the date on which an occupancy permit for private residential use is issued. Nothing in this paragraph is intended to prohibit the legislative body from establishing different tax rates for different



categories of residential property, or from changing the dollar amount of the special tax for the parcel if the size of the residence is increased or if the size or use of the parcel is changed.

(e) Fix a time and place for a public hearing on the establishment of the district which shall be not less than 30 or more than 60 days after the adoption of the resolution.

(f) Describe any adjustment in property taxation to pay prior indebtedness pursuant to Sections 53313.6 and 53313.7.

(g) Describe the proposed voting procedure.

The changes made to this section by Senate Bill 1464 of the 1991–92 Regular Session of the Legislature shall not apply to special taxes levied by districts for which a resolution of formation was adopted before January 1, 1993.

SEC. 4. Section 53345.8 of the Government Code is amended to read:

53345.8. (a) The legislative body may sell bonds pursuant to this chapter only if it determines prior to the award of sale of bonds that the value of the real property that would be subject to the special tax to pay debt service on the bonds will be at least three times the principal amount of the sum of the following:

(1) The principal amount of the bonds to be sold.

(2) The principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to this chapter on property within the community facilities district or a special assessment levied on property within the community facilities district. The legislative body shall estimate the principal amount of these other bonds that are secured by property within the district by assuming that the maximum allowable tax or assessment applicable to each parcel of property within the district will be levied until the date of maximum maturity of the bonds. Any determination made pursuant to this subdivision shall be based upon the full cash value as shown on the ad valorem assessment roll or upon an appraisal of the subject property made in a manner consistent with the policies adopted pursuant to paragraph (5) of subdivision (a) of Section 53312.7 by a state certified real estate appraiser, as defined in subdivision (c) of Section 11340 of the Business and Professions Code. The Treasurer may recommend definitions, standards, and assumptions to be used for these appraisals. These definitions, standards, and assumptions are advisory only, and the definitions, standards, and assumptions to be applied to appraisals will be those



adopted by the local agency pursuant to paragraph (5) of subdivision (a) of Section 53312.7.

(b) Notwithstanding the provisions of subdivision (a), if the legislative body selling the bonds finds and determines that the proposed bonds do not present any unusual credit risk due to the availability of credit enhancements, or because a sufficient portion of the principal amount of a bond issue has been deposited in a self-financing and self-liquidating escrow account under conditions such that it cannot be withdrawn until the value of real property subject to special taxes has increased sufficiently so that the requirements of subdivision (a) will be met or for other reasons specified by the legislative body, the provisions of subdivision (a) may be disregarded.

(c) Notwithstanding the provisions of subdivision (a), if the legislative body selling the bonds finds and determines by a vote of not less than four-fifths of all of its members that the proposed bond issue should proceed for specified public policy reasons, the provisions of subdivision (a) may be disregarded.

A finding and determination by the legislative body pursuant to this subdivision shall be final and conclusive upon all persons in the absence of actual fraud, and neither the legislative body nor the district shall have any liability of any kind whatsoever out of, or in connection with, any finding and determination.

SEC. 5. In enacting this act, the Legislature finds and declares the following:

(a) The Mello-Roos Community Facilities Act (Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code) authorizes local agencies to acquire facilities and implicitly authorizes them to acquire portions or phases of those facilities.

(b) Under that act, local agencies use many ways to acquire facilities and to recognize the portions or phases of those facilities.

(c) The failure to authorize and make payments for the portions or phases of those facilities may increase the cost of constructing housing, the facilities that are needed to serve housing, nonhousing developments, and other job-creating projects. As a result, the cost of housing and other development may become more expensive.

(d) Section 53313.5 of the Government Code protects the public interest by requiring that any work accepted pursuant to that section shall be performed or constructed as if the work had been



performed or constructed under the direction and supervision, or under the authority, of the local agency.

(e) When local agencies comply with the requirements of Section 53313.5 of the Government Code, there are valid reasons to encourage those local agencies to make purchase payments for discrete portions or phases of facilities.



Approved _____, 2003

Governor

